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8 **BEFORE THE**
9 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

10 **HEARING IN THE MATTER OF CALIFORNIA**
11 **DEPARTMENT OF WATER RESOURCES**
12 **AND UNITED STATES BUREAU OF**
13 **RECLAMATION REQUEST FOR A CHANGE**
IN POINT OF DIVERSION FOR CALIFORNIA
WATER FIX

DWR'S OBJECTION TO SAN
JOAQUIN COUNTY'S REQUEST TO
ENTER EXHIBITS INTO EVIDENCE

14 **I. Exhibits Regarding the San Joaquin River**

15 The California Department of Water Resources ("DWR") objects to the entry into
16 evidence of San Joaquin County's exhibits SJC-369 and SJC-372 as relating only to
17 issues beyond the scope of sur-rebuttal and beyond the scope of the CWF hearing. As
18 explained further below, each of these exhibits relates to the San Joaquin River
19 watershed upstream of Vernalis. At the hearing on September 26, 2018, parties
20 discussed with the Hearing Officers the relevance of materials related to the San
21 Joaquin River upstream of Vernalis. It was recognized that this discussion was
22 repetitive of prior rulings that excluded the San Joaquin as within the scope of this
23 hearing. As stated at the hearing by CSPA, "Vernalis flows has been pretty much ruled
24 out of this hearing." (rough transcript, September 26, 2018, p.49:25-50:2.) CSPA's
25 recollection is correct that in the course of Part 2 Rebuttal the Hearing Officers ruled
26 that discussions of the San Joaquin River in processes outside the CWF are not within
27 the scope of this hearing.

28 Exhibit SJC-369 is a 2010 San Joaquin River temperature study unrelated to the

1 CWF. As stated on the cover page, this report was prepared for a State Water Board
2 informational hearing in 2010. It does not reference the Bay Delta Conservation Plan or
3 the California WaterFix.

4 Exhibit SJC-372 is a 2009 Tuolumne River, tributary to the San Joaquin River,
5 salmon study unrelated to CWF.

6 7 **II. Non-self Authenticating and Hearsay Exhibits**

8 The Hearing Officers indicated in the February 21, 2017 Ruling regarding
9 admission of testimony and exhibits that while exhibits may not need sponsoring
10 testimony, in those cases where no sponsoring testimony or authentication is provided
11 the exhibits must have some foundational support to be properly admitted. (Feb 21,
12 2017 Ruling, p.16.) The Ruling went on to state that some exhibits may be self-evident
13 or explained elsewhere. This Ruling also indicated that while Hearsay may be
14 permissible in this hearing it is also a proper basis for objection.

15 SJC-370 is the prior testimony of Bill Jennings, who was not offered as a witness in
16 sur-rebuttal and therefore not available for cross-examination. This exhibit is not self-
17 authenticating for the substantive content of the document. Furthermore, it represents
18 hearsay. It should also be noted that this testimony does not include “an affirmation,
19 signed by the witness, as to the truth of the response” as required by the March 27,
20 2018 Ruling.

21 SJC-371 is the prior testimony of Carl Mesick, who was not offered as a witness in
22 sur-rebuttal and therefore not available for cross-examination. This exhibit is not self-
23 authenticating for the substantive content of the document. Furthermore, it represents
24 hearsay. It should also be noted that this testimony does not include “an affirmation,
25 signed by the witness, as to the truth of the response” as required by the March 27,
26 2018 Ruling.

27 SJC-373 is the prior testimony of Tim Stroshane, who was not offered as a witness
28 in sur-rebuttal and therefore not available for cross-examination. This exhibit is not self-

1 authenticating for the substantive content of the document. Furthermore, it represents
2 hearsay. It should also be noted that this testimony does not include “an affirmation,
3 signed by the witness, as to the truth of the response” as required by the March 27,
4 2018 Ruling.

5 SJC-381 is not self-authenticating and hearsay. This exhibit consists of
6 presentation materials without attribution or context.

7 SJC-383 is the prior testimony of Jonathan Rosenfield, Christina Swanson, John
8 Cain and Carson Cox, who were not offered as a witness in sur-rebuttal and therefore
9 not available for cross-examination. This exhibit is not self-authenticating for the
10 substantive content of the document. Furthermore, it represents hearsay. It should
11 also be noted that this testimony does not include “an affirmation, signed by the witness,
12 as to the truth of the response” as required by the March 27, 2018 Ruling.

13 SJC-387 is a comment submission of the U.S. Department of the Interior, which is
14 not a party to this hearing nor presented a witness in sur-rebuttal and therefore not
15 available for cross-examination. This exhibit is not self-authenticating for the
16 substantive content of the document. Furthermore, it represents hearsay.

17 SJC-388 through SJC-395 are the closing comments of various parties, many of
18 which are not a party to this hearing nor presented a witness in sur-rebuttal and
19 therefore not available for cross-examination. These exhibits are not self-authenticating
20 for the substantive content of the document. Furthermore, it represents hearsay.

21 22 **III. Duplicative Exhibits**

23 SJC-514 is the 1999 FEIR for the 1995 Water Quality Control Plan, which is
24 duplicative of SWRCB-32.

25 SJC-516 is the 2006 Water Quality Control Plan, which is duplicative of SWRCB-
26 27 and SWRCB-28.

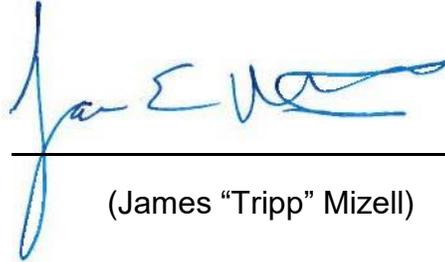
27 It should also be noted that time constraints have prevented DWR from reviewing
28 all of the SJC exhibits for duplications within the SWRCB exhibit list. It may be the case

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that a number of the studies by the fishery agencies are also contained within SWRCB exhibits. DWR requests that the Hearing Staff conduct a full review for the purposes of efficiency and clarity.

For the reasoning found above, the exhibits should be excluded from evidence as beyond the scope or lack of relevance for proper sur-rebuttal.

Submitted September 27, 2018.



(James "Tripp" Mizell)